

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3202 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

KANORIA FINANCERS PVT LTD

Versus

STATE OF GUJARAT

Appearance:

Shri K.S. Nanavaty, Senior Advocate, for Messrs.

Nanavaty Associates, Advocates, for the
Petitioner

Shri A.G. Uraizee, Assistant Government Pleader,
for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 31/08/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (respondent No.1 herein) on 18th May 1994 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India.

By the impugned order, the order passed by the Competent Authority at Ahmedabad (respondent No. 2 herein) on 3rd September 1990 came to be set aside and the holding of the petitioner was declared surplus by 946.64 square meters.

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the declaration in the prescribed form filed by one Surajben, widow of Punjabhai Shankarhai, under sec. 6(1) of the Act was processed by respondent No. 2 and by his order passed on 31st August 1990 (communicated on 3rd September 1990) under sec. 8(4) of the Act, respondent No. 2 came to the conclusion that the holding of the land-holder was not in excess of the ceiling limit and he therefore ordered closure of the proceeding. Its copy is at Annexure G to this petition. It appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its *suo motu* revision under sec. 34 of the Act was therefore contemplated. A show-cause notice came to be issued to the land-holder on 3rd October 1992 calling upon the land-holder to show cause why the order at Annexure G to this petition should not be revised. By the order passed by and on behalf of respondent No. 1 on 18th May 1994, the order at Annexure G to this petition came to be set aside. Its copy is at Annexure J to this petition. The aggrieved petitioner has approached this Court by means of this petition under art. 226 of the Constitution of India for questioning its correctness.

3. It may be sufficient at this stage to note that, by his order passed on 28th June 1979, respondent No. 2 granted permission under sec. 27 of the Act to sell one parcel of land bearing survey No. 131 reconstituted as sub-plot No. 4A of Final Plot No. 327 in Town Planning Scheme No. 6 admeasuring 1340.30 square meters (the disputed land for convenience). Its copy is at Annexure D to this petition. In his order at Annexure G to this petition the aforesaid sale transaction in favour of the petitioner was referred to. A copy of the order at Annexure G to this petition was also served to the present petitioner. In spite of that, no show-cause notice for the proceeding under sec. 34 of the Act was served to the petitioner. No notice of hearing was served to it either. Since the petitioner can be said to have interest in the subject-matter of this petition by virtue of the permission granted by the order at Annexure D to this petition, no order could have been passed under sec. 34 of the Act without giving an opportunity of

hearing to the petitioner. The impugned order at Annexure J to this petition cannot therefore be sustained in law on this ground.

4. It may be mentioned that against the order at Annexure J to this petition, the petitioner has sought review by its application made on 7th August 1995. It appears to have remained pending with respondent No. 1. In view of my aforesaid discussion, I think the application for review is not entertainable as review is a creature of statute and no power of review is conferred by the Act on any authority thereunder. In that view of the matter, the review application made by the petitioner is of no consequence.

5. In the result, this petition is accepted. The order passed by and on behalf of respondent No. 1 on 18th May 1994 at Annexure J to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for its fresh disposal according to law after giving an opportunity of hearing inter alia to the petitioner herein. Rule is accordingly made absolute with no order as to costs.
